

Form 2635, in duplicate. Both copies of the claim shall be filed with the regional director (compliance) for the region in which the factory is located. The claim shall specify the quantities of tobacco products on which claim is made and the tax liability in respect thereof, and shall set forth the circumstances surrounding the shortage and the reason the manufacturer believes tax is not due or payable. The regional director (compliance) will, after such investigation as he deems appropriate, allow the claim to the extent he is satisfied the shortage was due to operating losses such as damage during grading, sorting, or packaging, and was not caused by theft or other unlawful or improper removal. Upon action on the claim by the regional director (compliance) he will return the copy of Form 2635 to the manufacturer as notice of such action, which copy shall be retained by the manufacturer.

(72 Stat. 1414, as amended, 1417, 1419, as amended; 26 U.S.C. 5701, 5703, 5705)

[T.D. 6961, 33 FR 9489, June 28, 1968. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

TOBACCO PRODUCTS LOST OR DESTROYED

§ 40.301 Action by claimant.

Where tobacco products are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, and the manufacturer desires to file a claim for the tax on such products under the provisions of § 40.282 or § 40.283, he shall indicate on the claim the nature, date, place, and extent of such loss or destruction. The claim shall be accompanied by such evidence as is necessary to establish to the satisfaction of the regional director (compliance) that the claim is valid.

(72 Stat. 1419, as amended; 26 U.S.C. 5705)

[T.D. 6871, 31 FR 39, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986]

TOBACCO PRODUCTS WITHDRAWN FROM THE MARKET

§ 40.311 Action by claimant.

(a) *General.* Where tobacco products are withdrawn from the market and the manufacturer desires to file claim under the provisions of § 40.282 or § 40.283, he shall assemble the products in or adjacent to a factory if they are to be returned to bond or at any suitable place if they are to be destroyed or reduced to materials. The manufacturer shall group the products according to the rates of tax applicable to the products, and shall prepare a schedule of the products, on ATF Form 5200.7, in triplicate. All copies of the schedule shall be forwarded to the regional director (compliance) for the region in which the products are assembled.

(b) *Large cigars.* Refund or credit of tax on large cigars withdrawn from the market is limited to the lowest tax paid on that brand and size of cigar during the required record retention period (see § 40.185), except where the manufacturer establishes that a greater amount was actually paid. For each claim involving large cigars withdrawn from the market, the manufacturer must include a certification on either Form 5200.7 or Form 2635 (5620.8) to read as follows:

The amounts claimed relating to large cigars are based on the lowest sale price applicable to the cigars during the required record retention period, except where specific documentation is submitted with the claim to establish that any greater amount of tax claimed was actually paid.

(See 26 U.S.C. 5705)

[T.D. ATF-80, 46 FR 18310, Mar. 24, 1981, as amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987; T.D. ATF-307, 55 FR 52743, Dec. 21, 1990; T.D. ATF-424, 64 FR 71932, Dec. 22, 1999; T.D. ATF-420, 64 FR 71941, Dec. 22, 1999]

§ 40.312 Action by regional director (compliance).

Upon receipt of a schedule of tobacco products withdrawn from the market, the regional director (compliance) may assign an ATF officer to verify the schedule and supervise disposition of